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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

|                                       |   |                        |
|---------------------------------------|---|------------------------|
| In re Application of:                 | ) | Art Unit: 1647         |
|                                       | ) |                        |
| NIELSEN, et al.                       | ) | Examiner: DEBERRY, R.  |
|                                       | ) |                        |
| Serial No.: 09/845,716                | ) | Washington, D.C.       |
|                                       | ) |                        |
| Filed: May 2, 2001                    | ) | February 2, 2006       |
|                                       | ) |                        |
| For: USE OF $\alpha$ -MSH AND EPO FOR | ) | Docket No.: NIELSEN=3A |
| PREVENTING OR TREATING                | ) |                        |
| ISCHEMIC CONDITIONS                   | ) | Confirmation No.: 3819 |

COMMUNICATION CONCERNING CLAIMS OF FOREIGN PRIORITY

U.S. Patent and Trademark Office  
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Randolph Building, Mail Stop AF ✓  
401 Dulany Street  
Alexandria, VA 22314

Sir:

The above-identified application was filed on May 2, 2001. On May 9, 2001, applicants filed a claim of foreign priority, thereby satisfying 37 CFR 1.55 and MPEP 201.12(II)(A). Subsequently, on August 1, 2001, Applicants perfected the claim of foreign priority by filing the certified copies.

It has come to our attention that the §1.63 declarations filed on September 24 and October 22, 2001 do not list these claims of foreign priority.

The PTO does not construe the mere failure of a declaration or ADS to refer to a foreign priority as the withdrawal of the foreign priority claim. Instead, pursuant to MPEP 201.14(c)(III), it asks the applicants to explain the inconsistency and file a new declaration or ADS stating the foreign priority. There is no formal responsibility for applicants to file the corrective declaration or ADS until they receive such notice.

In this instance, the PTO, like applicants, overlooked the inconsistency, and in the official filing receipt mailed

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February 20, 2002, acknowledged the claimed priorities. Moreover, since the OFR acknowledged those priorities, applicants had no reason to think that there was a problem with the declaration.

Applicant's Counsel, Iver Cooper, discussed these points with Supervisory Patent Examiner Brenda Brumback. Since this case was abandoned in favor of a continuation application, the PTO has no intention of issuing a notice of inconsistency at this time. However, SPE Brumback asked that we clarify the record by filing this paper, confirming that we had no intention of withdrawing the claims of foreign priority.

In addition, we enclose an ADS which sets forth those claims.

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